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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**

9 PENSION BENEFIT GUARANTY
10 CORPORATION,
11 1200 K Street, N.W.
12 Washington, D.C. 20005

13 Plaintiff,

14 vs.

15 XENA HOMES, INC.,
16 2322 183rd Street, Ct. E
Tacoma, WA 98445-4204

17 Defendant

Case No.: 3:19-cv-5272

**COMPLAINT FOR PLAN
TERMINATION AND TRUSTEESHIP**

18 **COMPLAINT**

19 This action arises under Title IV of the Employee Retirement Income Security Act of
20 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1301-1461 (2012 & Supp. V 2017). Plaintiff, the
21 Pension Benefit Guaranty Corporation (“PBGC”), files this Complaint pursuant to 29 U.S.C.
22 §§ 1342(a)(1) and (2), 1342(c), and 1348(a), seeking an order (a) terminating the Xena Homes,
23 Inc. Retirement Plan (the “Pension Plan”), (b) appointing PBGC as the statutory trustee of the
24 Pension Plan, (c) establishing December 31, 2012, as the termination date for the Pension Plan,
25 and (d) directing the Defendant and any other person or entity having possession, custody, or
26 control of any records, assets, or other property of the Pension Plan, to transfer, convey, and
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1 deliver all such records, assets, and property to PBGC.
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4 **JURISDICTION AND VENUE**

5 1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C.
6 §§ 1303(e)(3) and 1342(c) and (f).

7 2. Venue properly lies in this Court under 29 U.S.C. §§ 1303(e)(2) and 1342(g).
8 Defendant Xena Homes, Inc. (“Xena Homes”) is a Washington corporation located at 2322 183rd
9 Street, Ct. E, Tacoma, Washington 98445-4204, and the Pension Plan is administered there.
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11 **PARTIES**

12 3. Plaintiff, PBGC is a wholly owned United States government corporation
13 established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan
14 termination insurance program created by Title IV of ERISA. When an underfunded pension
15 Plan terminates, PBGC provides the timely and uninterrupted payment of pension benefits to
16 plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.
17

18 4. Defendant, Xena Homes is the plan administrator of the Pension Plan within the
19 meaning of 29 U.S.C. §§ 1301(a)(1) and 1002(16)(A).
20

21 **THE PENSION PLAN**

22 5. The Pension Plan is a single employer, defined benefit pension plan that is
23 covered by Title IV of ERISA. *See* 29 U.S.C. § 1321(a).

24 6. Xena Homes established the Pension Plan effective December 1, 2007.

25 7. As of December 31, 2012, PBGC estimates that the Pension Plan is underfunded
26 by approximately \$72,299, and is owed unpaid minimum funding contributions of \$16,267. The
27 Pension Plan has seven participants.
28

1 Notice of Determination (the “Notice”) to Xena Homes, as plan administrator of the Pension
2 Plan, stating PBGC’s determination that the Pension Plan has not met the minimum funding
3 standard required under section 412 of the Internal Revenue Code, and that the Pension Plan will
4 be unable to pay benefits when due. A copy of the Notice is attached as Exhibit 1.
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6 15. On September 12, 2018, PBGC sent correspondence to Xena Homes’ president
7 and owner, Chong Han, requesting that he execute an agreement terminating the Pension Plan,
8 establishing the Pension Plan’s termination date, and appointing PBGC as trustee of the Pension
9 Plan under 29 U.S.C. § 1342(c). To date, Mr. Han has not responded to PBGC’s request.
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11 16. Pursuant to 29 U.S.C. § 1342(c), a district court may order the termination of a
12 pension plan if necessary to protect the interests of participants, avoid any unreasonable
13 deterioration of the financial condition of the plan, or avoid any unreasonable increase in liability
14 to the PBGC insurance fund.
15

16 17. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of
17 termination of a pension plan covered by Title IV when PBGC and the plan administrator have
18 not agreed on a date of plan termination.

19 18. As of the filing of this Complaint, PBGC and Xena Homes have not agreed on a
20 date of plan termination for the Pension Plan.

21 19. December 31, 2012, should be established as the date of the Pension Plan’s
22 termination pursuant to 29 U.S.C. § 1348(a)(4). As of that date, Xena Homes had ceased all
23 operations and the Pension Plan’s participants no longer had any justifiable expectation of the
24 Pension Plan continuing.
25

26 20. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by
27 the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(b) provides that
28

PBGC may request that it be appointed as trustee of a plan in any case.

21. PBGC is ready, willing, and able to serve as the statutory trustee of the Pension Plan.

REQUEST FOR RELIEF

WHEREFORE, PBGC requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating that the Pension Plan is terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing December 31, 2012, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Xena Homes and any other person or entity having possession, custody, or control of any records, assets, or other property of the Pension Plan, to transfer, convey, and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and
5. Granting such other relief as the Court deems just and proper.

Dated: April 11, 2019
Washington, D.C.

Respectfully submitted,

/s/ Cassandra Burton Caverly
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